

Task Force to Study the Maryland Agricultural Land Preservation Foundation

Interim Report, 2003 Session of the General Assembly January, 2003

The Task Force to Study the Maryland Agricultural Land Preservation Foundation (MALPF) was created by House Bill 740 in the 2000 Session of the General Assembly. The General Assembly reactivated the Task Force in 2002, to further study and make recommendations on a number of issues as yet unresolved in the report of August 21, 2001.

The Task Force will remain active through May 31, 2004, at which time a final report is due. This report recommends legislative proposals for the 2003 Session of the General Assembly, and several changes Task Force members believe the Foundation should put into effect as soon as possible.

Overview

The first statewide farmland preservation program in the nation, MALPF has preserved over 217,000 acres. It is still at the forefront of land preservation programs nationally and more popular than ever, with easement applications consistently exceeding available funds. However, the program has changed little since its inception, while development pressure on rural land has increased, and the agricultural industry has changed considerably. To protect the State's \$300 million investment in the Program to date, the Program must adapt to these changes.

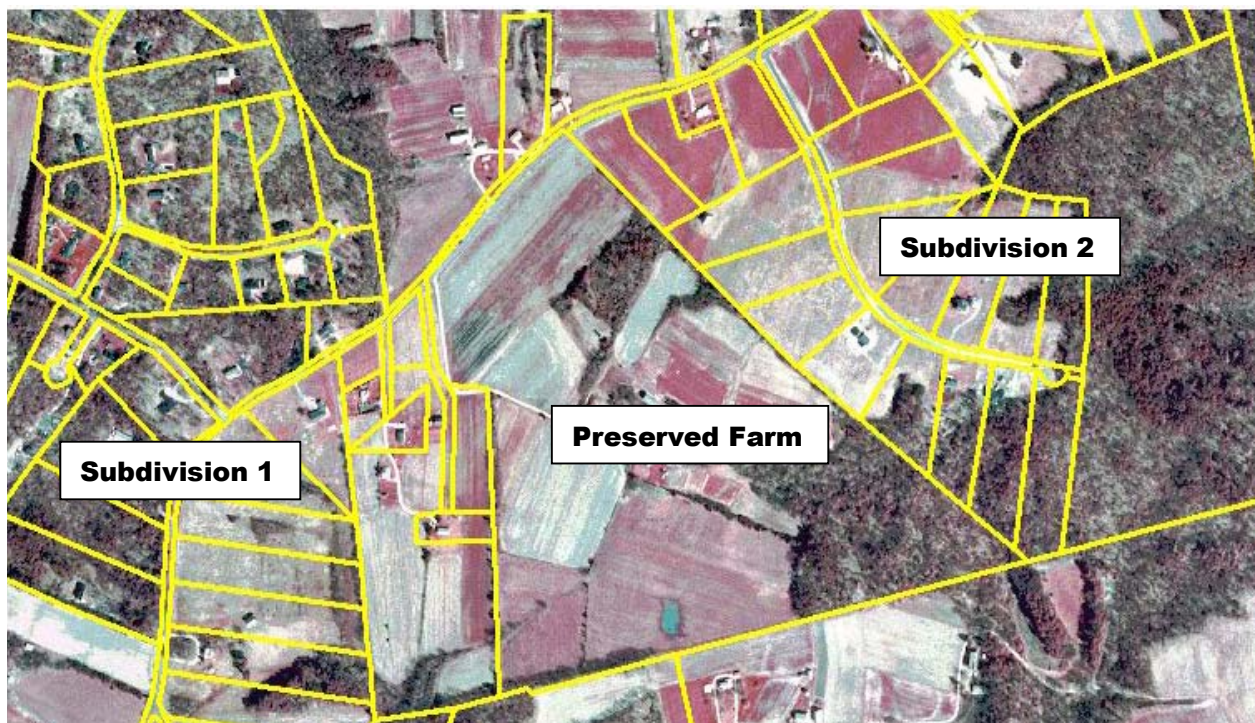
Critical Improvements for the Long-Term Success of the Program

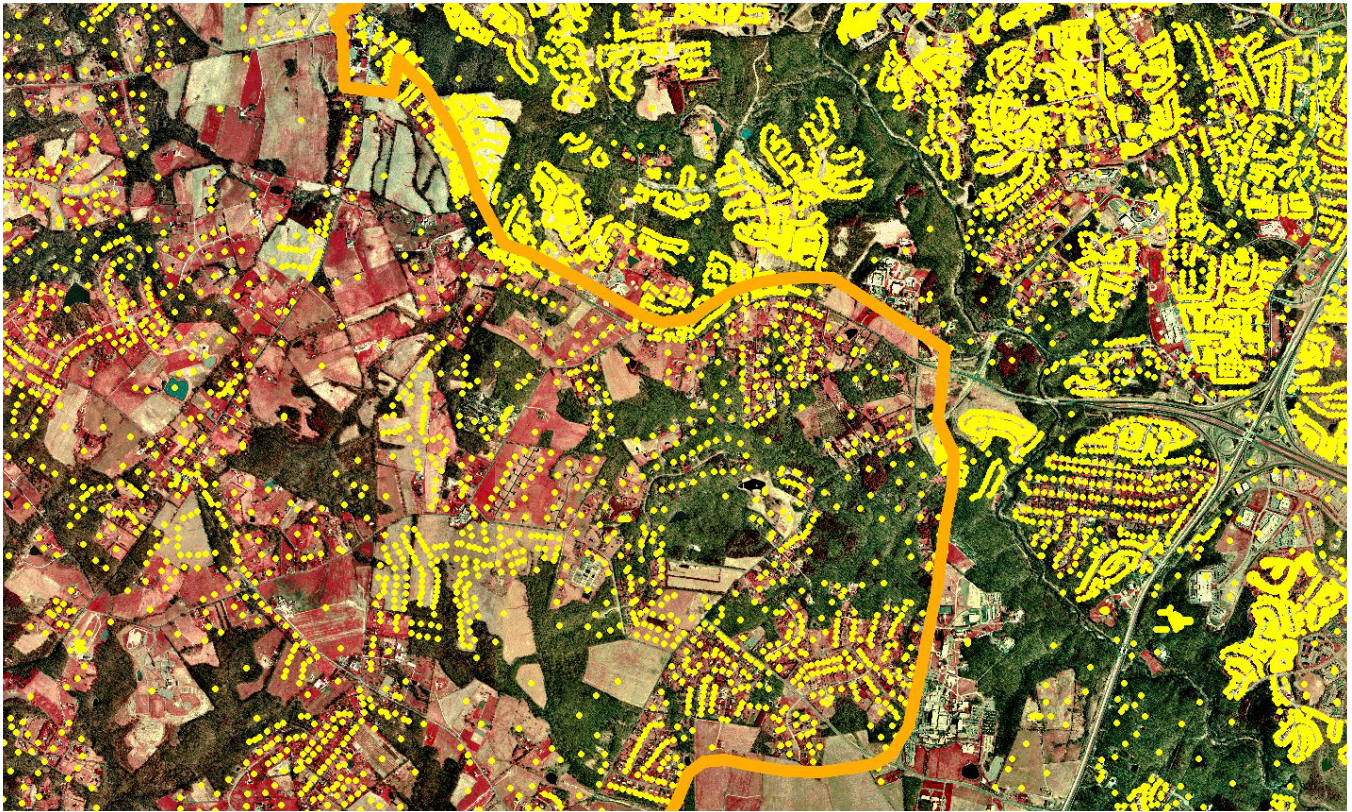
- **Allow compatible economic activities and supplemental income**
 - **Level the playing field for farms with good soils and farms in rural areas**
 - **Focus acquisition on good farmland in areas protected by zoning and increase funding when the current fiscal crisis ends**
 - **Provide new landowner options for lot exclusions**
 - **Establish Foundation policy for approving districts from which land will be withheld**
 - **Revise the easement valuation system to maintain landowner interest and set reasonable limits for public investment**
 - **Utilize bond funds to replace diverted dedicated funds whenever possible during the current fiscal crisis**
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- As agricultural economics and markets change, many farmers must supplement income from sources other than farming to keep their land in agriculture. The Program should

establish clear guidelines for acceptable activities on easement properties that do not compromise the State's interest in protecting the land for farm and forest production.

- Easement valuation and ranking procedures sometimes result in excessive acquisition costs. In addition, they tend to favor poorer soils over better ones and farmers in metropolitan areas over those in rural areas. Valuation and ranking should be modified to correct these shortcomings.
- Residential and other forms of development allowed on and around farms in the Program can be incompatible with the legislative intent of the Program and the public's investment in preservation. A few simple changes should be made to protect both landowner and public interests in future MALPF easements.
- Where development pressure is high and agricultural zoning is permissive, agricultural land is being heavily subdivided and developed. In such areas, program goals are being compromised, and easement funds are not sufficient to compete effectively with development (see photographs below and on the next page and discussion under *Achieving Program Goals*). The State and counties should identify priority preservation areas, make additional easement funds available in these areas, and use protective zoning to complement the purchase of easements in maintaining the agricultural base. In the short term, the process should begin through county easement ranking systems; after the current fiscal crisis ends, funding should be increased for these priority areas, in the form of Landowner Incentive Grants (discussed later in this report).

The photograph below of a county agricultural zone, overlaid with parcel boundaries, shows how an easement may be compromised if local land use tools do not support the State's investment. When these two subdivisions are developed, agricultural production on the easement may be severely hampered by residential neighbors.





The two pictures on this page illustrate the importance of zoning in agricultural areas. Land zoned for agriculture is located to the left of the orange lines in both pictures. Land zoned for development is located to the right. Each yellow dot represents a residential lot subdivided or already developed. Millions of dollars have been spent to buy easements in both areas. There are fewer dots in the agricultural portion of the bottom picture because the zoning better supports agricultural land preservation.



The Task Force recommends that the legislature, the Governor, and the Foundation take a combination of legislative and administrative actions to correct these shortcomings in the Program's ability to achieve its goals. These recommendations, and the compelling reasons for them, are discussed below under three headings: Economic Activities and Uses on Easements; Easement Valuation; and Achieving Program Goals. Legislative recommendations for 2003 are listed at the end of the report.

I. Economic Activities and Uses on Easements

A number of problems and issues concerning various uses and activities were identified by the MALPF Board and staff, local Program administrators, and members of the Task Force. For this report, the Task Force examined three major issues related to development and other non-agricultural uses on and adjacent to easement properties:

- Non-agricultural activities as sources of supplemental income for landowners on land under easement;
- Lot exclusions, specifically for owner's and children's lots and existing dwellings; and
- Land withheld from new agricultural preservation districts.

For each of these issues, the Task Force recommends either policy clarification or legislative changes. Each issue is discussed separately.

Allow Supplemental Income Opportunities that Are Compatible with Land under Easement. Easement purchases are intended to preserve the land for agriculture and forestry. Non-agricultural commercial and industrial uses may compromise this purpose, and thus are not allowed.

However, many farmers that have preserved or would like to preserve their land need supplemental sources of income beyond farming. The need can arise from poor production in a given year, or from variations in the profitability of producing and marketing agricultural commodities.

The ability to supplement farm income with other activities can affect landowners' willingness to enter into a preservation agreement. If these activities can take place without compromising the State's investment in the land for agricultural production, the Task Force believes that it is in the State's interest to allow them, on a case-by-case basis. Landowners will then have a greater incentive to preserve their farmland.

Economic Activities on Easements: Issues

- **To preserve land for farming and forestry, guidelines prohibit commercial activities**
- **Many farmers need supplemental income to continue farming**
- **Many of the requested farm and forestry related uses and home occupations would not compromise State investment**
- **Compatible activities will encourage participation in MALPF and benefit farmers**
- **MALPF & program administrators lack clear guidelines for dealing with many requested uses and activities**

The MALPF Board has increasingly debated allowing uses and activities that landowners request to supplement their incomes, but it does not have clear guidance from enabling legislation or established policy. Often the requests are for activities that are *related* to farming, forestry, or other occupations that will not affect the production potential of the land, but are not farm production *per se*: for example, corn mazes, large animal veterinarian services, and trap or skeet shooting. However, the Foundation lacks a sound basis for decisions. Consequently, local Program administrators cannot provide clear advice, and landowners do not know what to expect.

The Task Force recommends that the Foundation establish clear policy and guidelines that will allow farmers to earn supplemental income from farm and forestry related uses on land under easement and from home occupations. The guidelines should ensure that allowed activities do not affect the value of the land for production or interfere with agricultural and forest production. The Task Force has drafted guidelines for a range of commonly requested activities for the Foundation's consideration. In general, we recommend the following:

Economic Activities on Easements: Recommendations

- **Establish clear guidelines**
- **Allow farm and forest related activities and home occupations to supplement income**
- **Ensure compatibility of allowed uses with State investment so that there are no impacts on production or productivity, rural character of land**
- **Use Task Force guidelines for commonly requested activities as a starting point**

- Activities must be limited in nature and in the amount of land used, so that use of the farm for active production is not compromised.
- Activities must be limited to those that have no damaging effect on soil productivity.
- If use of buildings is required, that use must be limited to existing farm structures and have no permanent effect on their value for agricultural use.
- Allowed activities must be compatible with the rural character of the preserved farm and its surroundings.

The Foundation believes it has the authority under existing law to implement the recommendations on economic activities compatible with agriculture and forestry. However, the Task Force is proposing a minor legislative change, in the form of clarifying language, for the legislature's and Governor's consideration during the 2003 Session.

Maintain Benefits of Lot Exclusions but Limit Their Impact on Farmland.

Current law allows the original seller of an easement to subdivide an owner's lot, children's lots, and existing dwellings on the farm, at a rate of one per each 20 acres under easement, with a maximum of ten. These lots are called "lot exclusions". Family lots are intended for use as principal residences for owners and children only; eligibility to exclude these lots does not transfer to subsequent owners of the farm.

The purpose of these provisions is to encourage the continuation of family farming operations. They allow grown children to live on the farm, and the owner to transfer the farm and retire to a house on the original property.

Lot Exclusions: Issues

- **It is not possible to ensure that all lot requests are appropriate**
- **Multiple lot requests on smaller farms + high land values = little preservation accomplishment + high public cost for easements**

Most landowners do not request lot exclusions, and the vast majority of requests are for one or two lots. The Foundation, local program administrators, and local advisory boards believe that most requests are made with honest intentions, consistent with the provisions of the Program. However, fewer children live on the farm these days, and the subdivision of even a few lots can have a

significant effect on the farm. Over the years, as questionable requests have come before the Foundation, it has become difficult or impossible to ensure that requested lot exclusions are consistent with the Program's provisions. This is particularly true when multiple lots and agricultural subdivisions are requested on a farm that already has numerous pre-existing dwellings. It is impossible to determine if requests are legitimate without resorting to investigative efforts that are impractical.

When the number of excluded lots is large relative to the size of the farm, the State may pay a significant amount for an easement that extinguishes few development rights. This effect is likely to be greatest in areas with high development pressure and land values. For example, an easement might initially remove seven development rights from a 100-acre farm at a cost of \$400,000. Five rights could be restored as lot exclusions, for a payback of \$20,000. The net accomplishment would be that two development rights were extinguished for \$380,000.

Although this is just an example, it illustrates what can occur when the number of lots excluded is large relative to the size of the farm. Because the purpose of the Program is to preserve farmland relatively free from the constraints and impacts of development, little may be accomplished in terms of the Program's preservation objective under these circumstances, but the public cost may be large.

Lot Exclusions: Recommendations

- **Give landowners a choice: family lots or one unrestricted lot right**
- **Limit family lot rights to a maximum of three**
- **Reflect in the easement value the unrestricted rights that are retained**
- **Retain the required payback for family lots**
- **Subdivide existing dwellings as family lots or as the unrestricted lot**

The Task Force recommends a few changes to MALPF's provisions for lot exclusions. These changes will maintain the benefits of lot exclusions for farmers while protecting continued public investment in the Program.

- Give landowners a choice: they may retain the right to exclude family (owner's and children's) lots, or the right to exclude one lot without restrictions, i.e., it may be used by or transferred to anyone the owner chooses.
- Reduce the maximum number of family lots to three: one for the first full 20 acres, and one for each additional full 50 acres, as shown in the following chart. Payback requirements would remain unchanged.

Farm Acres	Number of Family Lot Rights
0 – 19	0
20 – 69	1
70 – 119	2
120+	3

- If the landowner chooses to retain the one unrestricted lot right, the appraised fair market value used to determine the value of the easement will reflect that this right is not being extinguished. The right can be exercised at any time, with the location of the lot subject to approval of the local Agricultural Advisory Board and the Foundation. The right is transferable, i.e., it would convey to the new owner if the property were transferred.
- The landowner may also choose to reserve no lot rights. The fair market appraisal will assume that all residential lot rights are being extinguished by the easement.
- Other dwellings present on the property when it is enrolled as a district may be subdivided from the property as an owner or child's lot, or as the single unrestricted lot exclusion permitted. Otherwise, they must remain part of the easement.
- Current Foundation policy and practice for tenant houses would remain.

A legislative proposal to accomplish these changes has been prepared for the legislature's and Governor's consideration.

Clarify Policy on Withheld Land

Land Withheld from Proposed Districts: Issues

- **There are legitimate reasons to exclude land from a district**
- **Development on excluded acreage may conflict with agricultural production**
- **Development rights "extinguished" with public funds may be used for private profit on adjacent land**
- **Requests to withhold more land for development are occurring more frequently**
- **No guidelines exist to guide the Foundation's decisions when land is to be withheld from a district**

Traditionally, relatively few landowners wishing to establish a MALPF district have proposed withholding part of the farm from the district. Most such requests are made for one of several reasons: to meet qualifying soils criteria, to exclude land used to store landscaping equipment, or to develop one or two lots. Most counties consider these legitimate reasons, in terms of the purpose of the Program, although some county advisory boards do not approve districts if land is being withheld.

If land is to be withheld for development of more than a few lots, it may undermine the purpose of the Program and result in significant residential subdivision next to an easement. Residential neighbors can view the noise and odors as nuisances and attempt to alter or stop agricultural and forestry operations, thereby compromising public investment in the land for productive agriculture and forestry.

Finally, and perhaps more important, when land is withheld and the district is then valued for easement purchase, it is often impossible to ensure that the State is extinguishing the number of development rights for which it pays. The result is that development rights may be purchased with public funds, but those rights may subsequently be used for development on withheld land, thereby undermining the public's investment.

Legitimate Reasons for Exclusion of Land from Districts

- **To meet qualifying soils criteria**
- **Land excluded is zoned for development**
- **Land is planned for a non-agricultural public purpose**
- **Land is not developable, e.g., wetlands**
- **Excluded land contains existing commercial or residential development**
- **Withheld land poses little or no potential risk to investment in the district for agriculture**
- **Land is under local agricultural zoning and will allow three or fewer lots**

In recent years, requests to withhold land for development have increased, as have the number of acres to be withheld. The Task Force believes that this trend is not in farmers' or the public's interests, and recommends the following:

- The Foundation should establish a policy guiding the approval of districts from which contiguous acreage is being excluded.
- In general, the Foundation should accept district applications if the withheld land poses little or no potential risk to future agriculture and forestry on the district. As initial guidelines for consideration by the Foundation, see *Legitimate Reasons for Exclusions of Land from Districts*, above.
- The Foundation should reach agreements with each county to ensure that development rights the State pays to extinguish are not retained for private use by the original or a subsequent owner of withheld land.

The Foundation believes that it has the authority under existing law to accept or reject district applications using these criteria if land is to be withheld. The Task Force recommends that the Foundation establish and begin using appropriate guidelines to address the issue as soon as possible.

II. Easement Valuation

MALPF Easement Valuation:

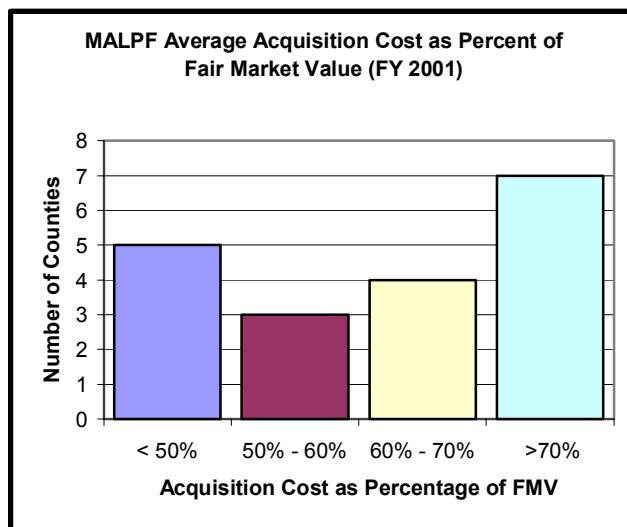
Shortcomings

- **The current system discriminates against land with better soils**
- **The current system favors farms that have a higher fair market value**
- **The Program currently pays rural farmers a lower percentage of fair market value than farmers in metro / transition counties**
- **Easement acquisition costs can approach fair market value, especially in metro and transition counties**

The current method of valuing easements under MALPF consists of the following:

- A formula-based “agricultural value,” which is subtracted from the land’s fair market value to produce the easement value.
- A landowner asking price, i.e., the amount for which the landowner is willing to sell an easement is required in an application to sell an easement.
- Ranking by ratio: asking price divided by easement value. The lower the ratio, the higher the ranking for easement purchase by MALPF.
- There is no cap on the amount that can be paid for a particular easement.

High Easement Values. The Task Force found a number of shortcomings in the existing method of valuing easements. First, easement acquisition costs can approach the fair market value of the land, i.e., the easement may cost nearly what it would cost to purchase the land outright. This has occurred most frequently in metropolitan and some transitional (e.g., Southern Maryland) counties.ⁱ For example, average acquisition costs in seven of the nineteen counties participating in MALPF in FY 2001 exceeded 70% of the land’s fair market value (see graph).

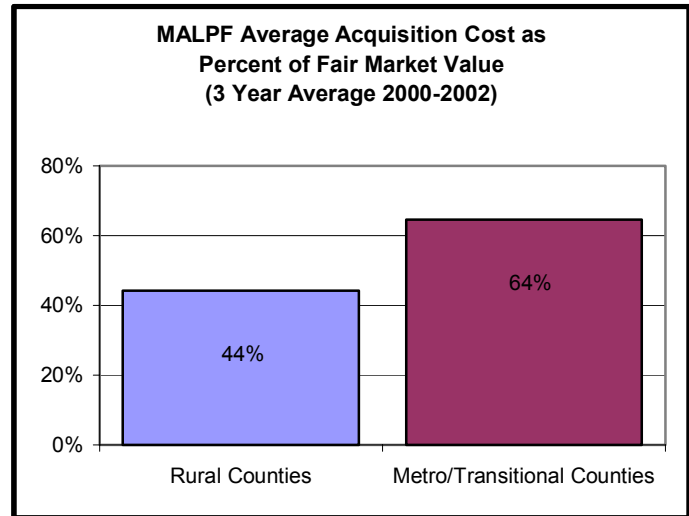


Fair Market Value, Soils, and Ranking. Second, the current system gives advantages to owners of land with high fair market value, to the disadvantage of both rural farmers and owners of land with better soils. Because the estimate of agricultural value under the formula is generally low and does not vary much, easement valuation is driven primarily by fair market value. Consequently, owners of the most expensive land, generally land with the greatest development value, can afford to discount their asking price the most, thereby improving their ranking. This is consistent with the Program’s competitive bidding strategy. However, on two farms identical in all respects except soils, the one with the better soils will have a lower easement value and will be at a disadvantage, for bidding purposes, to the one with poorer

soils.ⁱⁱ In addition, properties with the highest development value may not be the highest priority for easement acquisition; for example, they may not have the best soils, or be most important in a county's strategy to limit development and preserve land in key locations.

Metro versus Rural Farms. Finally, easement acquisition costs are typically a lower percentage of fair market value in rural counties than in metropolitan and transition counties, as shown in the graph. This is a combined by-product of valuation and ranking procedures, and has several undesirable consequences:

- It costs the State more money because land values are higher in metro / transition counties.
- Farmers in more rural areas receive a lower percentage of fair market value for their easements. Selling an easement therefore gives these farmers less income to support farm production. However, in these areas, income from the sale of an easement may be important to support farm production.
- These consequences do not support Program goals.



Leveling the Playing Field

Recommendations:

- **Dispense with the Agricultural Value formula**
- **Cap easement values at a maximum% of fair market value (FMV)**
- **Use new ratio for ranking properties that is equal to easement asking price divided by the price cap**
- **MALPF offer is the asking price or cap, whichever is lower**
- **Change ranking to preserve competitive bidding and better farmland**

Results:

- **Limit excessive easement values**
- **Favor good soils, most productive land, not high FMV and poor soils**
- **Put metro / rural farmers on level field**

The changes recommended for valuation (see "Leveling the Playing Field," left) will address each of these shortcomings. Replacing the current "easement value" with an easement value "cap" – a maximum percentage of appraised fair market value – will eliminate biases in easement value that both favor farms with poor soils in the bidding process and contribute to differences in acquisition costs (as a percentage of fair market value) between farms in rural and metro / transitional counties. Limiting acquisition cost to a maximum percentage of fair market value will also prevent unreasonably high easement values. We recommend that the legislature authorize the Foundation to set the easement cap. The cap should be

reviewed regularly for possible adjustment. The Foundation's objective should be to encourage continued landowner interest in all parts of the State, and to do so at a cost that is substantially less than it would be to purchase land in fee and re-sell it with easement restrictions. After a review of data from recent fiscal years and discussion with county Program administrators, the Task Force believes that a cap of 70% fair market value would accomplish these objectives, and should be considered by the Foundation.

The Task Force's recommended changes to the Foundation's ranking procedures are described in the following section of this report: *Achieving Program Goals*. Those changes, combined with changes recommended here for valuation, will make it possible to give higher priority to better soils and farmland, while maintaining the benefits of competitive bidding. While further enhancements are possible, we believe that the recommended changes will substantially resolve many of the deficiencies in MALPF's current valuation and ranking methods examined by the Task Force.

A specific area recommended for further study is that of a point system for valuation, such as those used by Rural Legacy, Montgomery County, and numerous other states. In a point system, value is added to easement offers for land and site features that best contribute to the goals of the easement acquisition program. Point systems have many advantages that may be of value. However, the Task Force was unable to fully explore and reach consensus on this approach, and believes the recommended changes in valuation and ranking will be a substantial improvement.

III. Achieving Program Goals

The goals of the MALPF program are to:

1. Preserve land as a source of food and fiber for the citizens of Maryland;
2. Control the subdivision and development of farmland;
3. Curb the spread of urban blight and deterioration; and
4. Protect farm and forest land as open space.

Achieving Program Goals: Issues

Goals are increasingly compromised by:

- **Development;**
- **insufficient easement funds to compete with development;**
- **weak zoning support for preservation;**
- **development incompatible with many forms of production; and**
- **biases in valuation and ranking contrary to Program goals.**

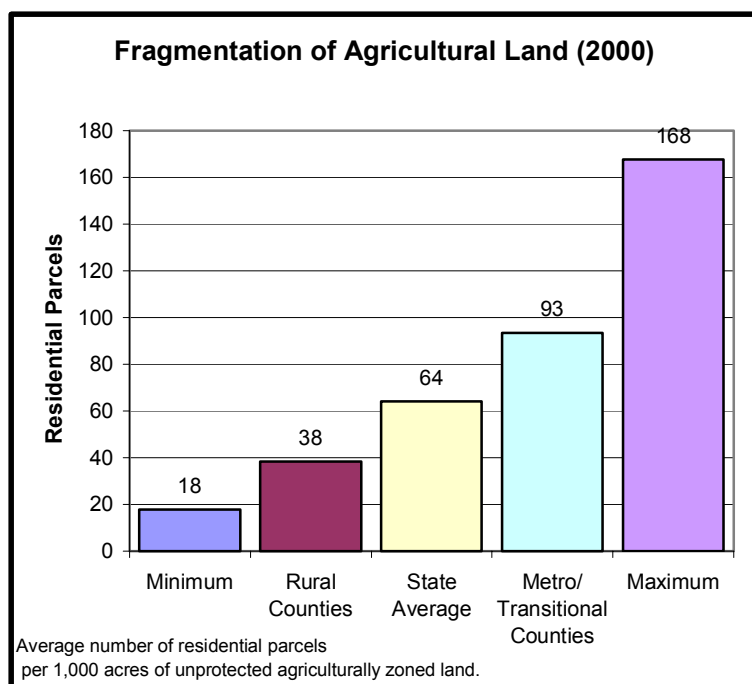
Achieving Program Goals: Recommendations

- **Give priority to the best farms and areas better protected from development**
- **Restore full funding in FY '04 budget by using bond revenue**
- **Direct new funding for Landowner Incentive Grants to priority areas when fiscal crisis ends**
- **Continue easement acquisition beyond these priority areas with existing revenue sources**

In 2002, the General Assembly established another goal for the Program through a joint resolution (SJ 0010 / HJ 0022), which called for tripling the number of acres of productive agricultural land currently preserved by MALPF, Rural Legacy, GreenPrint, and local preservation programs by 2022. The goal is approximately 1,030,000 acres. This is roughly the number of acres estimated by the Task Force (1.2 million) as needed to support production of a fairly wide range of agricultural products in Maryland.

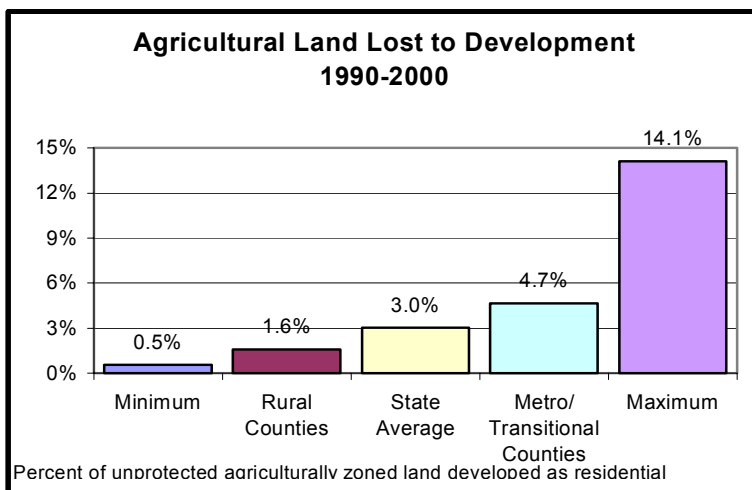
What Goals Are Being Achieved?

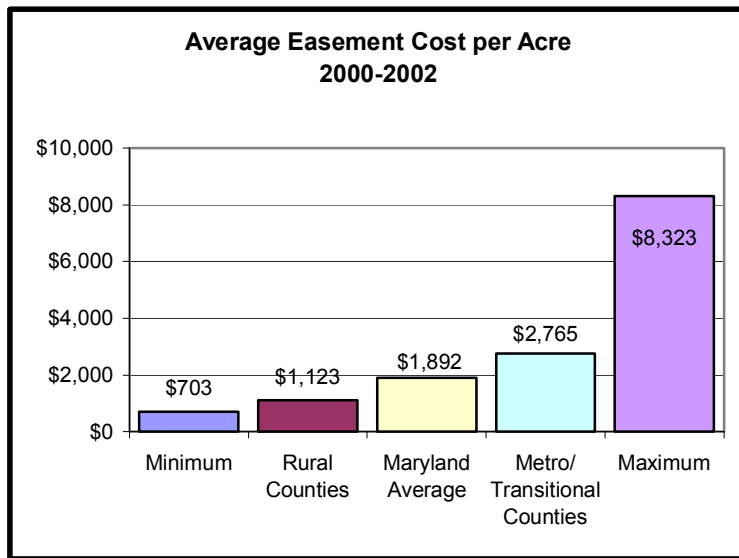
In the Baltimore-Washington metropolitan area, agricultural and forest land has been subject to substantial development pressure for some time. As metropolitan employment centers have expanded from Baltimore and Washington into surrounding counties, new and expanded highways have made it easier for people to commute to these centers while living in rural areas.



As a result, agricultural and forest land has become increasingly fragmented through subdivision of farms into residential parcels (see graph, *Fragmentation of Agricultural Land, 2000*, photo on the next page, and the yellow dots on earlier photos). This is occurring especially in the metropolitan area and in formerly rural transitional counties, primarily in Southern Maryland and west of Central Maryland. MALPF and many individual counties have invested tens of millions of dollars to preserve agricultural land and farming throughout the affected areas.

In response to increasing development pressure, some counties have made agricultural zoning more protective. The rate of subdivision and development has slowed in counties that strengthened zoning substantially. Meanwhile, the rate of conversion has increased in other metropolitan and transitional counties (see graph, *Agricultural Land Lost to Development, 1990-2000*).





As a consequence, easement acquisition costs are skyrocketing in many areas (see graph, *Average Easement Cost per Acre 2000-2002*). They are highest in metropolitan areas, especially where zoning provides the least support for preservation investment. As development pressure and demand continue to expand from the metro cores to formerly rural areas, zoning will become increasingly important in determining where the greatest investment per acre is required to preserve agricultural

land. However, because there is no statewide strategy to achieve Program goals that recognizes the essential role of zoning, there is also no incentive to protect State preservation investment through zoning.

Given these conditions, the Task Force believes it is important to evaluate the return on public investment in agricultural land preservation, beginning with answers to two questions: (1) Which goals of the Program are being achieved? and (2) What changes are necessary to ensure long-term success?

Regarding two of the Program's goals, it is clear that some combination of more easement money and better zoning is necessary in many areas to control subdivision and development and curb the spread of urban blight and deterioration. Most farmers and supporters of farm industries recognize that more development, directly around a farm and in a farming region, means more conflicts between the interests of farmers and subdivision residents, and more limits on the kinds of production that can take place on the farm. This is especially so for farmers engaged in large-scale production of crops for non-local markets, and many forms of livestock and animal production.



Despite the fact that some forms of production continue even in the most heavily subdivided agricultural zones in the State, the range of agricultural products that are likely to be profitable in Maryland will be limited increasingly if development continues to fragment the land and

surround farms. In heavily developed areas, some farmland preserved with public funds is likely to become private estates surrounded by residential development. That outcome accomplishes only one goal of the program—to preserve farm and forest land as open space—and is not, in the view of the Task Force, good return on public investment in agricultural easements. This goal might be achieved effectively through in-fee acquisition of other lands, which would result in publicly accessible open space on strategically selected land.

Critical Program Enhancements

In light of these findings, the Task Force identified three critical Program enhancements. First, the Program should increasingly focus easement acquisition on high quality farms in areas that best address the Program's goals. The Task Force calls these Priority Preservation Areas, (PPAs). Second, greater incentives must be created for counties and landowners to limit development and stabilize land use in Priority Preservation Areas. Third, any additional program funds should be invested in easement acquisition in those areas, to make it possible for landowners to sell easements more readily.

MALPF's Goals: Strategies to Achievement

- **Encourage counties to designate Priority Preservation Areas (PPAs)**
- **Encourage counties to set acquisition and other complementary goals within PPAs**
- **Modify MALPF ranking guidelines and regulations to emphasize easement acquisition in PPAs**
- **Keep buying easements outside PPAs**
- **Use bond funds to support MALPF if dedicated funds are diverted to the general fund**
- **Raise the cap on state income tax credits for donated or bargain sale easements**
- **When the economy and State finances permit, establish and direct new funding sources, through Landowner Incentive Grants, to PPAs**

Areas with the greatest potential to fulfill Program goals will have productive soils and land with relatively few production limitations, including little fragmentation from development. Local government may have to work with landowners to stabilize land use in such areas with more effective zoning. If more protective zoning is necessary to stabilize the land base, more funding should be made available to give the majority of interested landowners timely opportunities to sell easements.

We recommend that these critical Program enhancements take place in two phases: initially by modifying the Program's easement ranking system, and subsequently by providing Landowner Incentive Grants to counties for easement acquisition in Priority Preservation Areas. Because MALPF cannot control or affect local zoning or the choices of landowners directly, eligibility for additional or bonus Program funds – Landowner Incentive Grants – is essentially the only means at the Foundation's disposal to effect the necessary changes.

The Task Force recommends that, sometime after FY 2004, when the current fiscal crisis has ended, the legislature and the Governor appropriate additional revenues for easement acquisition in Priority Preservation Areas.

Phase 1 Recommendation: Modify Easement Ranking System

The Foundation's easement ranking system should be changed to give higher ranking to farms with better soils in Priority Preservation Areas. At the same time, the benefits of discount bidding procedures, so essential in limiting the acquisition costs of the Program, should be preserved. To enable the Foundation to make the appropriate changes, a minor legislative change must be made to the Agriculture Article § 2-510 and § 2-511, and implementing regulations.

These changes will give the Foundation and counties considerable flexibility in devising ranking systems to accomplish the desired outcomes. The Task Force recommends the following steps. In consultation with counties, the Foundation should:

- Develop new guidelines for county ranking systems for Round One offers in FY 2005. The guidelines should rank properties based on: location in a Priority Preservation Area of the county; soil and other land characteristics associated with productivity; agricultural production and contribution to the agricultural economy; and any other unique county considerations that support the Program's goals.
- Work to establish ranking systems consistent with the new guidelines.
- Retain the benefits of discount bidding. This might be done by adjusting original rankings according to the ratio of the asking price to the easement value or cap. For example, if the number of applicants is sufficient, properties might be placed in higher and lower priority groups, and then ranked by ratio within groups.

Phase 2 Recommendation: Increase Funds for Landowner Incentive Grants in PPAs

To achieve the acreage goal established by the legislature in the 2002 Session of the General Assembly, the Task Force estimates that approximately \$1.9 billion (in FY 2002 dollars) will need to be appropriated to acquire easements on productive farmland over the next 19 years (beginning in FY 2004). This is roughly \$500 million more than we estimate (see below) would be appropriated for MALPF, Rural Legacy, GreenPrint, and local preservation programs – the programs recognized as contributing to the goal – during that period.

The Task Forces estimates that about 343,000 acres of productive agricultural land were already protected when the joint resolution establishing an acreage goal passed the legislature in 2002. Roughly another 687,000 acres more must be preserved over twenty years to meet the goal. Assuming full funding under current revenue sources for the relevant programs, and accounting for variation in the economy and the diversion of easement funds to other budget items when necessary, the Task Force projected that the State would preserve another 500,000 acres by 2022, leaving it 187,000 acres short of its goal.ⁱⁱⁱ An additional \$494 million beyond estimated revenues from existing sources, dedicated to the preservation of productive

agricultural land, will be required to prevent this shortfall in the 19 years beginning in FY 2004. That equates to about \$26 million per year in additional funds.

The Task Force recommends the following strategy to achieve the Program's acreage goal:

- Revenue sources estimated to provide the additional \$500 million – about \$26 million per year – should be identified and established as soon as possible after the economy and State fiscal situation recover.
- Bond funds should be used to replace existing dedicated funds diverted from the Program during FY 2004 and until such time as the economy and State fiscal situation recover.
- MALPF's fund allocation procedures should be changed to direct funds from any new revenue sources solely to PPAs designated by counties and certified by the State.

The Task Force recommends that the Governor and legislature consider new funding sources, including increases in the Real Estate and Agricultural Land transfer taxes, and closing a loophole in the Real Estate Transfer Tax for partnerships and limited liability corporations. The Task Force will provide a separate report summarizing its findings about these potential sources, including the amount of additional funding that might be generated, the fiscal impacts on individual real estate transactions, and political and administrative problems associated with each potential source.

One observation worth including here relates to the Agricultural Land Transfer Tax. This tax is the only source of funding solely dedicated to MALPF and counties for agricultural land preservation. However, it generates only a fraction of the funds needed to balance the rates of conversion and preservation of agricultural land. Given projected rates of conversion of resource land by 2020 – between 300,000 and 400,000 acres will be converted over the period – the rate of preservation will have to exceed the rate of conversion to achieve the Program's acreage goal and those of many counties. But it takes the agricultural land transfer tax on 17.9 acres removed from agricultural assessment in Calvert County, for example, to purchase an easement on just one acre of agricultural land there. The ratios in Carroll and Howard counties are 8.4 to 1 and 22.6 to 1, respectively.^{iv}

New funding sources identified for MALPF should be directed to PPAs. The extra funds to protect agriculturally productive land inside PPAs would take the form of Landowner Incentive Grants. These Grants would be awarded as part of the Round One MALPF allocations, but only when additional revenue sources are established through legislative action. The Task Force's concept for Landowner Incentive Grants in PPAs includes the following:

- Counties should propose and the State should evaluate and certify Priority Preservation Areas and associated Priority Preservation Plans.
- The Plans should be designed to achieve goals of the MALPF Program and more specific county goals that complement those of the State Program through local land use

management authority, State and local funds, and other landowner incentives for preservation.

- Within PPAs, counties should use measures to control the impacts of development, stabilize land use, and make possible the achievement of State and local goals for productive agricultural land.
- MALPF should concentrate new funds in PPAs through Landowner Incentive Grants. The Grants would be given only to counties with certified PPAs and Plans, to acquire easements or make financial enhancements for preservation of productive agricultural land engaged primarily in commercial agricultural production.
- The creation of PPAs by counties should be encouraged now as part of good land preservation policy, through changes to the easement ranking system as recommended by the Task Force.
- New guidelines for prioritizing easements, created by the Foundation and the counties, will ensure that easement funds preserve the best farms while maintaining the benefits of discounting.

IV. Conclusions and Recommended Legislation

The MALPF Task Force has worked to identify several areas in which the program can be improved to enhance economic opportunities for farmers on easements, better value easements to enhance and equalize competition for limited funds consistent with program goals, and help the program achieve its goals. While some issues identified as necessary to achieve program goals will require further discussion, several steps can be taken immediately by the Foundation to improve the program during the 2003 legislative session. Legislation has been drafted by Task Force staff to do each of the following:

- Clarify Program guidelines to allow farm and forest related economic activities and home occupations, in order to supplement farm income, encourage participation in the Program, and support land preservation (Agricultural Article § 2-513(b)).
- Modify lot exclusion policy to give landowners a choice (family lots or one unrestricted lot) and limit the total number consistent with the Program's purpose (Agricultural Article § 2-513(b)).
- Change the Program's easement valuation system to level the playing field for farms with good soils and farms in rural areas, and to eliminate acquisition costs that approach the in-fee fair market value of the land (Agricultural Article § 2-510 and § 2-511).
- Change easement ranking procedures to help the Program achieve its goals, by focusing acquisition on good farmland protected from development by zoning (Agricultural Article § 2-510).

In addition, the Maryland Department of Agriculture administration is hoping to take advantage of any opportunity to restore all or part of any diverted dedicated funds in FY 2004 with bond funds.

ⁱ “Transitional counties” means counties not traditionally considered part of the greater Baltimore / Washington metropolitan areas, that have been or are currently experiencing substantial increases in development pressure. Examples include Calvert, Charles, Saint Mary’s, and Frederick counties; and to a lesser degree, Washington, Wicomico, and Cecil counties.

ⁱⁱ Here is an example of how setting easement value by using the agricultural formula discriminates against the best farms. Two farms with equal fair market values of \$100,000 apply to MALPF for easements. The farms are located in the same general area and the only difference between the two is that one has good soils and the other has lower quality soils. The farm with better soils has an agricultural value of \$30,000, resulting in an easement value of \$70,000 (\$100,000 - \$30,000). The farm with lower quality soils has an agricultural value of \$20,000, resulting in an easement value of \$80,000 (\$100,000 - \$20,000).

As a result the farm with lower quality soils, with a higher easement value, has a greater ability to discount and improve its chances of receiving a MALPF easement offer than does the farm with better quality soils.

ⁱⁱⁱ The projections were done by Task Force and staff members of the Departments of Natural Resources, Budget and Management, and Planning.

^{iv} Lynch, Lori and Lovell, Sabrina J. © 2002. *Hedonic Price Analysis of Easement Payments in Agricultural Land Preservation Programs*. WP -2-13. Department of Agricultural and Resource Economics, the University of Maryland, College Park.